BAIL SLIP:-

The Appellant herein Viz P. Sanjeevi, accused in CC.No.206/97 on the file of the Prl Spl Judge, CBI Cases Chennai was directed to be released on bail as per orders to this court dated 13.1.1999 made in Crl.MP.no.11329 of 1998 in CA.No.1113 of 1998.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.1113 of 1998

P.Sanjeevi .. Appellant/Accused

Vs.

State rep by
The Inspector of Police,
Special Police Establishment
Central Bureau of Investigation,
Anti-Corruption Branch,
Chennai in Cr.No.35(A)/1996 .. Respondent/Complaint

Prayer: This appeal has been preferred under section 27 of the prevention of corruption act 1988 and under section 374, 382 of Cr.PC against Judgment dated 07.12.1998, made in C.C.No.206 of 1997 on the file of the Principal Special Judge for CBI Cases, Chennai.

For Appellant : Mr.A.V.Somasundaram for
M/s. Lakshmi Priya, Associates

For Respondent : Mr.N.Chandarasekaran,
Spl. Public prosecutor for CBI Cases.

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JUDGMENT

This appeal has been preferred against the judgment in C.C.No.206 of 1997 on the file of the Principal Special Judge for CBI Cases, Chennai. The accused has been charged under section 7 and also under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The charge against the accused is that he being a public servant as lineman at Anna Road, RSU Telephone Exchange, Madras Talephone, directly demanded and accepted from the complainant viz. Shri J.Gnanasekaran on 28.06.1996 at about 1.40 pm

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at Madras a sum of Rs.300/- as illegal gratification other than legal remuneration as a motive or reward for repairing the faults in his telephone bearing indicator No.8547095 and hence committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988 and on the same day at the same time and in the same transaction by corrupt or illegal means otherwise abusing your official position as such public servant obtained for yourself pecuniary advantage to the extent of Rs.300/- from Shri.J.Gnanasekaran for repairing his fault telephone bearing No.8547095 and thereby committed an offence under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.

2. The case was taken on file as C.C.No.206/1997 by the 11th Additional Special Judge for CBI cases, Madras. On appearance of the accused on summons, the learned trial judge has furnished copies under Section 207 of Cr.P.C. On the side of the Prosecution P.W.1 to P.W.8 were examined and Ex.P.1 to Ex.P.18 were exhibited and M.O.1 to M.O.17 were marked.

3. P.W.1 is the Sub-Divisional Engineer, Madras Telephones, Chenai. During 1996 he was working as Sub-Divisional Engineer, Chennai Telephones. The accused Sanjeevi was working as lineman in the same department as Class IV employee. According to P.W.1, he is the competent authority to take disciplinary action against the accused. P & T Manual Volume III, Part VII empowering the Sub-Divisional Engineer who is Group B Officer to appoint, to take disciplinary action and to remove from service Class IV employees (Group D). The copy of the abovesaid notification is Ex.P.1. Ex.P.2 is the sanction order for prosecution of the accused passed by P.W.1. P.W.1 would depose that before issuing sanction order he had perused the complaint and report and FIR and other documents pertaining to the statements of the witnesses etc. after applying his mind on perusing the said documents and relevant records and after getting himself satisfied that a prima facie case has been made out against the accused, he(P.W.1) had accorded sanction under Ex.P.2.

4. 4(1) P.W.2-Gnanasekaran, the complainant, would depose that he is indulging in taking orders in off-set printings. During 1996, he was having his business at Door No.49, 2nd street, Pudupet, Chennai. The telephone indicator number for the said premises is 8547095. The said telephone indicator number was assigned to him in the month of April. On 26.6.1996 he went to his office as usual. At that time he found the telephone line was snapped and the wire was kept in a roll. He was informed by the occupants of the upstairs portion that a lineman along with two persons came from Anna Road Telephone Exchange and snapped the telephone wire and that they also informed him(P.W.2) to go and meet in their office. Immediately P.W.2 has rushed to the telephone exchange office and enquired about

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the whereabouts of the lineman, where he was informed that the person who gave the connection for his telephone alone had disconnected the same. In spite of his(P.W.2) effective search he could not find the said lineman who had snapped the telephone connection. Hence, he preferred a complaint to the telephone exchange.

4(2) In the Officer they assured to get the repair done by the very next day. But has assured no one turned up on 27.6.1996. So he (P.W.2) went to the telephone exchange once again on 28.6.1996 and met the lineman, the accused Sanjeevi, in the telephone exchange and when he enquired about the disconnection of his telephone line without giving notice, the accused replied that the telephone is under repair and to set right the telephone he demanded Rs.300/- to be paid by way of bribe and that he further informed P.W.2 to wait at office between 1.00 pm to 2.00 pm. P.W.2 would further depose that he has no intention to give any bribe amount. Hence he decided to prefer a complaint to the Vigilance and Ante Corruption Department.

4(3) As decided on 28.6.1996 at about 10.30 am he went to CBI office and preferred Ex.B.3-complaint with the Superintendent of Police. Immediately the Superintendent of Police entrusted the work to the Inspector of Police, Sunil (P.W.4) who took him (P.w.2) to his office room and informed at about 11.00 am that his (P.w.2) complaint has been registered. P.W.4 called two independent witnesses viz. Venkatakrishnan from New India Assurance Company and Devanathan and he also sent word to Thiru.Ramasamy, Salam, Ponnazhagan, Natarajan and Head Constable Chandrasekaran and then he introduced him (P.W.2) to those persons and vice-versa, and they ascertained from him(P.W.2) the fact of demand and receipt of bribe. For that he replied in the affirmative. They went through the complaint-Ex.P.3 preferred by him and they prepared solution by dissolving sodium Carbonate in the water which was a colourless solution. They asked Venkatakrishnan of Insurance Company to dip his hand in the said solution and when he did so there was no change occurred in the solution.

4(4) The Inspector Sunil asked him (P.W.2) whether he is having the decoy amount to be given as a bribe to the accused. P.W.2 informed that he is having three 100 rupee notes and handed over them to Sunil (P.W.4). Thereafter, Sunil (P.w.4) applied a chemical power by name Phenolphthalein on those three 100 rupees notes and asked Venkatakrishnan to handle the said notes. Afterwards he asked Venkatakrishan to dip his hand in the said Sodium Carbonate solution, when he did so the solution became pink in colour. Thereafter, the Inspector of Police Sunil gave those currency notes (three 100 rupees notes) and place the same into his (P.W.2) pocket and requested him not to touch the same and he further instructed to take out the said currency notes only if the accused demands the bribe amount. The numbers of the currency notes were also noted down by P.W.4 and P.W.4 has also prepared a mahazar

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for what had transpired on the said date and obtained the signature from all those present there. Ex.P.4 is the said mahazar and he (P.W.2) has signed in each and every page of Ex.P.4 and that all the persons have cleared their hands with water.

4(5) After keeping the phenolphthalein away, Sunil (P.W.4) has further instructed Devanathan to be present along with P.W.2 and at the time of meeting the accused soon after the accused receives the bribe amount Devanathan was instructed to give signal by wiping his face with hand kerchief. After taking Sodium Carbonate powder and a glass tumbler and solution materials in a suitcase, they left the CBI office at 12.15 noon directly to his (P.W.2) office at No.49, 2nd street, Pudupet, Chennai, and they reached the office at 12.40 pm. He (P.W.2) and other witness Devanathan got down infront of his office and the remaining persons viz. Salam, Ponnazhagan were standing on the opposite side of the road and DSP Ramasamy, the Inspector of Police Sunil (P.W.4), Head Constable Chandrasekaran, Venkatakrishnan were standing in the second floor watching the incident. At about 1.40 pm the accused Sanjeevi along with two persons with telephone materials came to his (P.W.2) office and when he asked to set right the disconnection of the telephone pat came the reply from the accused that he had already set right the disconnection and asked from him (P.W.2) to check the working condition of his telephone. P.W.2 dailed his telephone and found working.

4(6)Thereafter the accused Sanjeevi asked the bribe amount and when he (P.W.2) tender the bribe amount the accused received the same with the person who accompanied him and handedover the same to him but the person, who accompanied him refused to receive the said amount. Then the accused Sanjeevi received the said bribe amount and put into his shirt pocket. Immediately Devanathan who was standing along with him (P.w.2) made signal by wiping his face with the hand kerchief. Immediately police squad waiting in the second floor came down and caught hold of the accused.

4(7) The Inspector Sunil asked the accused whether he had received any illegal gratification from him (P.W.2). The accused enquired Sunil whom they are? After explaining the accused that they belonging to CBI department, they took Sanjeevi inside the room Sanjeevi informed the police that he had put the bribe amount into his shirt pocket. Immediately constable by name Kabilan prepared sodium Carbonate solution in a glass tumbler. Sanjeevi was asked to dip his right hand into the solution when he did so the colour of the solution turned into pink. Another solution in another tumbler was prepared and the accused Sanjeevi was asked to dip his left hand when the accused dip his left hand into the solution there was no colour change occurred. The bottles containing the solution were collected in a separate bottle and sealed. The pink colour solution was marked as 'A' and colourless solution was marked as 'B'. The Inspector of Police Sunil asked Sanjeevi to take out the bribe amount from his shirt pocket and to handover the same to

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Venkatakrishnan. Accordingly the accused Sanjeevi took out the bribe amount and handed it over.

4(8) The Inspector of Police CBI compared the currency notes numbers in Ex.P.4 with that of the currency notes numbers found in the currency notes tendered by the accused and found both the currency notes numbers tally with each other and after recovering the shirt from the accused the shirt pocket was dipped in the sodium carbonate solution which turned pink in colour. The said solution was also taken out in a separate bottle and sealed. It was marked as 'C' and the shirt of the accused was packed and sealed and assigned letter 'D'.

4(9) P.W.2 would further depose that M.O.1 is the bottle 'A' containing the pink colour solution. M.O.2 is the bottle 'B' containing the colourless solution. M.O.3 is the bottle 'C' containing the pink colour solution in which the shirt pocket was dipped. The Inspector of Police has prepared Ex.P.5-mahazar for what transpired in the office. M.O.4 is the recovered shirt from the accused. P.W.2 has also identified M.O.5 notes to that he handedover the same to the accused after verifying the numbers in the currency notes.

5. 5(1) P.W.3-Devanathan has also corroborated the evidence of P.W.2. P.W.3 is the Assistant Manager of the New India Assurance Company. He would depose that during 1996 he was working in the regional office and on 28.6.1996 vigilance officer of the New India Assurance Company, asked him (P.w.3) to meet the Inspector Sunil at CBI Office at Shasthri Bhavan and he has further asked him (P.W.3) to take co-employee Thiru.Venkatakrishnan along with him and accordingly he went to Shasthri Bhavan and met the Inspector Sunil, where Sunil(P.W.4) introduced one Gnanasekaran (P.W.2) and showed the complaint preferred by P.W.2 wherein Gnanasekaran has complained about the demand of bribe of Rs.300/- by the accused and that the said demand of bribe was to set right the disconnection of telephone connection.

5(2) The Inspector Sunil had informed him about the importance of sodium carbonate solution and also about the phenolpthalein test. The Inspector Sunil asked P.W.2 to show the three 100 rupees notes proposed to be handed over to the accused and request Venkatakrishnan to note down the three currency notes' numbers. Venkatakrishnan had noted down the currency notes' numbers and the same was also entered in the mahazar. Afterwards in a glass tumbler he(Sunil-P.W.4) dissolved sodium carbonate powder and prepared a colourless solution and asked Venkatakrishnan to dip his finger into the solution and even after Venkatakrishan has dipped his finger into solution there was no change of colour in the solution.

5(3) Thereafter, the Inspector Sunil placed phenolpthalein powder on the surface of the three 100 rupees notes and asked Venkatakrishnan to touch those notes. After Venkatakrishan touched

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the notes he was asked to dip his finger in the said sodium carbonate solution which, on doing so turned pink in colour. The Inspector Sunil placed the three 100 rupees notes into the shirt pocket of Gnanasekaran and also instructed Gnanasekaran and other witnesses not to touch those three 100 rupees notes till they were handedover to the accused Sanjeevi and further the Inspector of Police has also checked the shirt pocket of his (P.W.3) and the shirt pocket of Gnanasekaran. The Inspector Sunil has asked P.W.3 to accompany P.W.2 to his office.

5(4) Before leaving the CBI office both Venkatakrishnan and Sunil washed their hands and phenolphthalein bottles were supplied by the CBI office and that all proceeded to the office of Gnanasekaran (P.W.2) and the Inspector of Police also informed him that after Sanjeevi receiving the bribe amount signal must be given by wiping the face with a kerchief. Ex.P.4 is the mahazar in which the currency notes' numbers have been noted. In Ex.P.4, he (P.W.3) Venkatakrishnan, Gnanasekaran, Sunil (P.W.4) have signed. DSP Ramasamy, Venkatakrishan and another were waiting in the upstairs portion of the house of Gnanasekaran. Infront of the office of P.W.2 on the road, Salam and another person were waiting. P.W.3 and Gnanasekaran were waiting in the office of Gnanasekaran and about 1.30 pm the accused Sanjeevi came to the P.W.2's office along with two other persons and they asked P.W.2 to check whether the telephone is working. Accordingly P.W.2 dialed his telephone and found his telephone working. Thereafter the accused Sanjeevi demanded P.W.2 to pay the bribe amount of Rs.300/-. Gnanasekaran (P.W.2) took out Rs.300/- from his pocket and handover the same to Sanjeevi. But Sanjeevi asked the other person to share the same but the said person hesitated to receive the said amount. Immediately Sanjeevi himself had received the amount and put the same into his shirt pocket. Immediately he (P.W.3) as advised earlier, had signaled by way of wiping his face with an hand kerchief.

5(5) Immediately DSP Ramasamy, Venkatakrishnan and another person came from the second floor along with two CBI officials who were standing out side the house on the road. P.W.4-Sunil asked the accused where he has received any amount and he replied in the affirmative. At that time the accused was strictly pattered and was shivering. The accused was taken to a room where the Inspector Sunil directed the constable to prepare sodium carbonate solution and accused to dip his hand in the said solution. As per the instruction, the accused dipped his right hand in the said solution, which turned into pink in colour. Sanjeevi was asked to dip his left hand in the another sodium carbonate solution. But when the accused dipped his left hand in the solution there was no colour change occurred. The said sodium carbonate was marked with letter 'B' .

5(6) Thereafter, the Inspector Sunil seized three 100 rupees notes from the accused and he has also campared the currency notes' numbers in the currency notes seized from the accused with

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the currency notes' number in the mahazar and found both the numbers tally with each other. The shirt of the accused was also seized by the Inspector Sunil. The Inspector Sunil asked the CBI constable Kabilan to prepare another sodium carbonate solution and dipped the right hand shirt pocket of the accused. Immediately the sodium carbonate solution turned pink in colour. The said solution was also collected in a bottle and sealed and letter 'D' was assigned to it. He has also signed in the seizure mahazar-Ex.P.5 along with other witnesses. Afterwards, the Inspector Sunil has also enquired the person who accompanied Sanjeevi, who in turn reveal his identity as William Gaurdian working in telephone department as class IV employee and that other person who accompanied the accused is Duraisamy and he is also working as a class IV employee in the telephone department. The Inspector Sunil has verified the identity cards of William and Duraisamy and ascertained the same. Both those persons were having telephone instrument and wire with them. The accused Sanjeevi was brought out side on bail on personal bond. M.O.1 to M.O.3 are bottles marked as 'A', 'B', & 'C'. William is the person who refused to receive the money on behalf of the accused Sanjeevi.

6. 6(1) P.W.4-Sunil is the Inspector of Police. He would depose that from 26.12.1994 he is working as the Inspector of Police, CBI ACB, Chennai, and on 28.6.1996 at around 1.30 am the Superintendent of Police called him to her chamber and endorsed the complaint-Ex.P.3 to her for taking necessary action. The Superintendent of Police introduced the complainant Gnanasekaran to him (P.w.4). P.W.4 took the complaint along with the complainant to the I.O's hall and after going through the complaint, he made some verifications about the antecedents of the complainant and the accused Sanjeevi. In the complaint, it was mentioned that Sanjeevi, lineman demanded an amount of Rs.300/- as bribe for restoring the connection for telephone indicator No.8547095. After ascertaining that P.W.2-Gnanasekarn will co-operate with the CBI team for laying a trap on Sanjeevi while demanding and accepting the bribe amount of Rs.300/-, at about 11.00 am he registered a case in R.C.No.35(A)/96 against Sanjeevi, lineman under Section 7 of the Prevention of Corruption Act. FIR is Ex.P.6. In the mean while, P.W.4 had arranged two independent witnesses from New India Assurance Company, Chennai.

6(2) At around 11.30 am the CBI officials Shri Ramasamy DSP, Shri Natarajan, Inpsector, K.A.A.Zalam, Inspector, Shir Ponnalagan SI, the complainant Gnanasekaran, the two independent witnesses Devanathan, and Venkata Krishnan and himself (P.W.4) assembled at the I.O's hall. P.W.4 introduced the complainant to the other members and vice versa. P.w.4 also explained the reason for assembling and also show the complaint of shri Gnanasekaran to the team members. The independent witnesses sought some clarifications from the complainant and they were also satisfied

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about the genuineness of the complaint. P.W.4 conducted the phenolphthalein sodium carbonate demonstration. P.W.4 directed the constable to prepare a fresh solution of sodium carbonate in a glass tumbler. He asked Venkatakrishna, independent witness to dip his fingers into the said sodium carbonate solution. The solution remained colourless. Then P.W.4 asked Gnanasekaran to produce the amount of Rs.300/- which is to be handed over to Sanjeevi as bribe. P.W.2 produced the amount in the denomination of Rs.100/- each. P.W.4 smeared the currency notes with phenolphthalein power and then directed Venkatakrishnan to handle the notes.

6(3) After handling the currency notes, he asked Venkatakrishnan to dip his fingers in the said sodium carbonate solution. When he did so the colurless solution turned into pink colour. Then he explained the importance of sodium carbonate phenolphthalein test to the team members that the phenolphthalein powder on contact with the sodium carbonate solution will give out a pink colour. After the demonstration was over he (P.W.4) asked Devanatham to accompany Gnanasekaran as an accompanying witness and over-hear the conversation which is to take place betweenm Gnanasekaran and Sanjeevi accused. P.w.4 also kept the phenolphthalein tainted currency notes in the shirt pocket of Gnanasekaran and directed not to touch the currency notes unless it was demanded by Sanjeevi acused. Gnanasekaran was physically searched by P.w.4 and he was found in possession of one American Library card and Rs.17/- in his possession. Devanathan accompanying witness was also subjected to physical check up.

6(4) After the proceedings have completed P.W.4 directed Devanthan to give a signal by wiping his face with his hand kerchief after the demand and acceptance of money by Sanjeevi is over. With this direction, the proceedings were concluded and then the entrustment mahazar was prepared by the CBI office in which all the team members put their signatures. The proceedings concluded at 12.10 pm. After that the CBI team proceeded to the trap spot. The entrustment mahazar is Ex.P.4, which was prepared in the Shastri Bhavan office. At around 12.15 pm, the trap team proceeded to the trap spot at N.49, Second street, Pudupet. At around 12.40 pm, they reached the trap spot. Gnanasekaran and Devanathan accompanied witness waited at the ground floor of the hall. P.W.4 along with the DSP Ramasamy, Inspector Natarajan and another independent witness Venkatakrishnan waited at the staircase leading to the 2nd floor. Inspector, K.A.A.Zalam and SI Ponnalagan took position at the street opposite to the building.

6(5) At around 1.40 pm they saw three persons entering the building. Immediately after that Devanathan accompanying witness showed the pre-arranged signal by wiping his face with this hand kerchief. After receiving the signal all rushed to the spot and saw three persons leaving the premises. Gnanasekaran identified Sajeevi, the accused. P.W.4 asked Sanjeevi, the accused, whether he received Rs.300/- as bribe from Gnanasekaran. Sanjeevi became

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nervous and answered in the affirmative. Then Sanjeevi was arrested.

6(6) P.W.4 directed Kabilan, the Constable, to prepare a sodium carbonate solution in a glass tumbler and it was prepared. P.W.4 directed the accused Sanjeevi to dip his right hand fingers into the said solution, when he did so the colourless solution turned into pink colour. The solution was preserved in a clean bottle and closed and sealed and marked as 'A'. A white sheet was pasted on the bottle in which both the independent witnesses affixed their signatures. Then P.W.4 directed the constable Kabilan to prepare another fresh solution of sodium carbonate in another glass tumbler. P.W.4 directed the accused Sanjeevi to dip his left hand fingers into the said solution. Even after dipping, the solution remained colourless. This solution was also preserved in another clean glass bottle and closed, sealed and marked as 'B'. On this bottle also a white paper was pasted in which both the independent witnesses affixed their signatures.

6(7) Thereafter, P.W.4 directed the accused Sanjeevi to hand over the bribe amount of Rs.300/-, which he received from Gnanasekaran. The accused Sanjeevi handed over the money to Venkatakrishnan independent witness. The independent witnesses verified the serial numbers of the currency notes with that of the numbers mentioned in the entrustment mahazar. They found them tallied. Then P.W.4 directed the accused Sanjeevi to remove his shirt and the shirt pocket was also subjected to sodium carbonate test by dipping the shirt pocket in a freshly prepared sodium carbonate solution. The resultant pink coloured solution was preserved in another clean bottle and closed and sealed and marked as 'C'. The independent witnesses affixed their signatures in this bottle also.

6(8) The accused Sanjeevi was also physically searched by P.W.4 and he was found in possession of one computer slip, one identity card, one pay slip for February 1996 and currency notes of Rs.220/-. The computer slip and the pay slip were seized by P.W.4 and the remaining items including the amount of Rs.220/- were returned to the accused Sanjeevi in the presence of independent witnesses. The shirt worn by Sanjeevi was also packed and marked as 'D'. The independent witness also put their signatures. The specimen seal used for sealing the impressions were taken in a separate white paper. The independent witnesses affixed their signatures. The complainant Gnanasekaran was also physically searched and he was found in possession of the items referred earlier. The other two members who accompanied the accused Sanjeevi were questioned by P.W.4. They identified themselves as William Gardien and Duraisamy. Both are Group D staffs. They were also in possession of some telephone wires and telephones, apart from their identity card. That two persons were allowed to leave the place.

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6(9) The accused Sanjeevi was provided with another shirt. The accused Sanjeevi who was arrested at 1.40 pm, was released at 4.00 pm. M.O.1 is the right hand wash of the accused Sanjeevi. M.O.2 is the left hand wash of the accused Sanjeevi. M.O.3 is the solution in which the shirt pocket of the accused was dipped. P.W.4 prepared a mahazar detailing the above proceedings at the trap spot and obtained the signature of the independent witnesses and other trap team memebrs. The mahazar is Ex.P.5.

6(10) After the trap was over, P.W.4 sent the head constable Chandrasekaran to bring a photographer to take photographs and the photographer took the photos of the disconnected lines. M.O.6 series and M.O.7 series are the photos and negatives respectively. M.O.4 is the shirt marked as 'D' by P.W.4, which was recovered from the accused and signed by the witnesses. The currency notes recovered from the accused are tallying with the numbers mentioned in the entrustment mahazar. M.O.5 is the currency notes. Then a search under Section 165 Cr.P.C, was conducted in the residence premises of the accused Sanjeevi by the Inspector Prem Kumar.

6(11) P.W.4 gave a requisition before the Court to send the properties for chemical examination. The report received from the forensic science lab is Ex.P.8. The computer slip and the pay slip seized from Sanjeevi at the time of trap on the trap spot is Ex.P.9 and Ex.P.10. After this formalities are completed P.W.4 handed over the case to the Inspector K.A.A.Zalam for further investigation as per the directions of S.P. CBI. P.W.4 was examiend by Superintendent of Police K.A.Zalam on 8.8.1996.

7. P.W.5 is a Commercial officer, New Lines Central Area, Chennai Telephones. She is working in the said office from August 1984. She would depose that Gnanasekaran (P.W.2) applied for telephone connection under OYT. The application is Ex.P.11. He submitted the application to her (P.W.5) customer relation officer. P.W.5 have given demand note for Rs.15,000/- which is Ex.P.12. After receiving payment from Gnanasekaran under Ex.P.13-receipt, the telephone connection was ordered as per Ex.P.14. Subsequently, P.W.5 intimated Gnanasekaran and the intimation is Ex.P.15. The phone number allotted to Gnanasekaran is 8547095. The entire file is Ex.P.16 which is relating to Gnanasekaran (P.W.2). P.W.5 was also examined by CBI.

8. P.W.6-Mariappan was working as technician in Telephone department during 1982-83. He became phone inspector during 1985. From December 1995 to June 1997 he was working in Anna Road, RSQ Exchange. The normal duties entrusted to him as phone inspector is docket allotements, verification of advice notes for new telephone connections, supervision of major faults as repairing works. Normally, when a complaint is received at the telephone exchange, it

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will come into computer, with telephone numbers and addresses and date of complaint. P.W.6 will handover the documents to linemen to do the job. After rectification was done it will be reported to him. Ex.P.17 is computer feed indicating telephone number 8547095 belongs to 'Gnanasekaran" - earthing fault. This Ex.P.17 was handed over to him (P.w.6 by SDE.Devaram for rectification. He inturn handed over Ex.P.17 to the accused Sanjeevi for rectification. Ex.P.18 is pending docket outside indicating number of telephones which are under fault. Ex.P.18 shows the telephone bearing No.8547095 as "eathing faults". After rectification, Sanjeevi, the accused has not approached P.W.6 for intimation. P.W.6 was examined by the CBI.

9. P.W.7-William, who had accompanied the accused along with another to P.w.2's office, has not supported the case of the prosecution. Hence, he was treated as a hostile witness.

10. P.W.8 is the Investigation Officer, who would depose that during 1996 he was working in the CBI, ACB as Inspector. He had received the records relating to this case on 8.8.1996 sent by the Inspector Sunil. After the receipt of the file, he continued the investigation. He has collected the relevant documents and examined the witnesses and recorded their statement. In his investigation he came to know that the accused has committed an offence under section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and after getting sanction for prosecution against the accused he has filed the charge sheet in this case before the court.

11. After going through the oral and documentary evidence let in before the trial Court, the trial Judge on the basis of the evidence, has come to the conclusion that the charge levelled against the accused have been proved beyond any reasonable doubt and accordingly convicted the accused under Section 7 of the Prevention of Corruption Act and sentenced the accused to undergo 2 years RI and also convicted the accused under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and sentenced the accused to undergo 2 years RI and a fine of Rs.300/- with default sentence. The learned trial judge has directed the sentence to be run concurrently. Aggrieved by the findings of the learned trial Judge, the accused has preferred this appeal.

12. Now the point for determination in this appeal is whether the mandatory requirements to bring the accused under the purview of Section 7 of the Prevention of corruption Act, 1988 and under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, have been followed to warrant a conviction in this case?

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13. The Point:-

13(1) The learned counsel for the appellant draw the attention of this Court alleging that there is a violation in following the mandatory provision of Section 19 of the Prevention of Corruption Act, 1988. Section 19 of the Prevention of Corruption Act, 1988, runs as follows:-

"Previous sanction necessary for prosecution :-

(1) No Court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,_

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974),_

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision of the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;

(b) no Court shall stay the proceedings under this Act on the ground or any error, omission or irregularity in the sanction granted by the authority unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

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(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation,_ For the purpose of this section,_

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

13(2) The learned counsel for the appellant would contend that the accused Sanjeevi is a public servant working as a lineman at Anna Road, RSU Telephone Exchage, Madras Telephones, at the relevant point of time and that as per section 19 of the Prevention of Corruption Act, 1988, to proceed against any public servant of Central Government or State Government necessary sanction should be obtained for a Court to take cognizance of an offence punishable under Section 7, 10, 11, 13 & 15 of the said Act. The learned counsel for the appellant would contend that since the charge levelled against the accused is one under Section 7 and Section 13 of the Prevention of Corruption Act, 1988, necessary sanction should be obtained from an officer superior in rank to that of the accused who has been empowered with the power of appointing as well as removing a person public servant belonging to the Grade of the accused. The learned counsel would contend that P.W.1 who had given sanction for prosecuting the accused under Ex.P.2 dated 30.12.1996 is not a competent authority as per the provisions contemplated under Section 19 of the Prevention of Corruption Act and hence, the very sanction under Ex.P.2 itself is invalid and it goes to the root of the case of the prosecution and on that ground alone the accused is liable to be acquitted. To emphasis this contention, the learned counsel for the appellant relied on 1979(4) SCC 172 (Mohd.Iqbal Ahmed Vs. State of Andhra Pradesh) and contended that in the absence of any valid sanction the whole prosecution shall be held invalid. According to the learned counsel for the appellant, the sanction in this case was accorded by P.W.1-Devavaram, Special Divisional Engineer of Madras Telephones and in his(P.W.1) evidence in the cross-examination he has admitted that he has not promoted the accused to lineman from line-masdoor and that he has not aware by which officer the accused was promoted in the telephone department and that the Divisional Engineer is the superior to him and that he cannot deny the suggestion that the promotion to the accused was given by the said Divisional Engineer. Relying on the said evidence of P.W.1 to the effect that the accused was not

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promoted by P.W.1, the learned counsel for the appellant would content that under Section 19 of the Prevention of Corruption Act, 1988, P.W.1 is not competent to accord sanction for prosecution against the accused Sanjeevi. This contention of the learned counsel for the appellant cannot be upheld because as per section 19 (2) of the Prevention of Corruption Act, 1988, the person competent to remove a public servant from his office at the time when the offence was alleged to have been committed is competent to accord sanction for prosecution. P.W.1 in his chief examination has deposed that lineman in Telephone Department is a class-iv employee and that he(P.W.1) is a Group-B officer as a Sub-Divisional Engineer and he is competent to take disciplinary action and to remove Group-D (class-iv) employee from service. To substantiate this, P.W.1 has produced Ex.P.1-notification issued by the Posts and Telegraphs. Part VII - General Central Service, Group 'D' under P & T Manual Volume III, which was exhibited as Ex.P.1, would say that staff working in telephone department can be suspended or dismissed from service by administrative officer, Officer of Telegraph Engineering Service, Group 'B' or General Central Service, Group 'B' Accounts Officer, Assistant Divisional Engineer, Telegraphs, Assistant Traffic Superintendent. So it is clear from Ex.P.1, P & T Manual, that a Group-B officer in the telephone department is competent to impose penalties on the staff working in telephone department. So the contention of the learned counsel for the appellant that P.W.1 is not a competent authority to accord sanction under Ex.P.2 against the accused cannot be upheld. Further, under Section 19(3)(a), (b) of the Prevention of Corruption Act, 1988, no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision of the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless the court things that it will amount to failure of justice.

13(3) The learned counsel for the appellant would attack Ex.P.2-sanction order on the ground that P.W.1 has not applied his mind while according sanction for prosecution against the accused under Ex.P.2. In support of this contention, the learned counsel of the appellant would rely on 2001 (1) Crimes 315 (J.S.Sathyanarayana (deceased) vs. State by Inspector of Police, Karnataka), wherein it has been held that sanction order for prosecution of an accused under Prevention of Corruption Act, on the fact of it, must indicate to Court clearly that sanctioning authority has evaluated material placed before it and has come to conclusion that case warranted a prosecution. The facts of the said case in brief are as follows:-

> "The 1st accused was the Chief officer of the Town Municipal Council, Madikeri and 2nd accused was a clerk under the 1st accused. They have been charged under Section 7, 13 & 19 of the of the Prevention of Corruption Act. The trial Court convicted both the accused under above

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said provisions of law for having accepted bribe of Rs.1000/-. It was contended on behalf of the accused before the appellate Court that before according sanction the officer who had accorded sanction had not called for the records relating to the charges levelled against the accused to evaluate the material placed before him to satisfy himself whether a prima facie case has been made out against the accused to accord sanction for prosecution."

The sanction in the above said case was accorded by Under Secretary who was not legally empowered to sanction the prosecution against the accused who were the Chief Officer of the Town Municipal Council and a clerk in the Municipality and that the delegation of power under the Rule is vested only on the State Government to relegate the same in favour of Governor, Chief Minister or the Ministers and that the Government can delegate the powers only on the Secretaries to the Government and under no circumstances an Under Secretary of the Government was not vested with power of according sanction to prosecution. The facts of the above said dictum clearly shows that sanction order in that case was issued by a person incompetent to issue the same. But that is not the case herein. P.W.1 being a Group B officer, is competent to accord sanction in respect of the accused who was a lineman as per Ex.P.1-rules incorporated in P & T Manual.

13(4) The learned counsel for the appellant relied on 1996 (1) MWN (Cr.) 63 (Ayyasamy and another Vs. State through the Inspector of Police Vigilance & Anti Corruption, Erode), and contended that mere narration of substratum of the allegation made against the accused without referring to any materials or documents which have been perused to ascertain the prima facie nature of the case the sanction cannot be accorded against a public servant by the sanction authority and hence, the sanction accorded under Ex.A.2 by P.W.1 without satisfying himself as to the existence of a prima facie case against the accused, the learned counsel would contend that the sanction void ab initio and invalid. In the above cited case, the accused was charged under Section 5(1) (d) r/w 5(2) of the of the Prevention of Corruption Act, 1947 and also under Section 161 IPC. The 1st accused in that case was a Sub-Inspector of Police and the 2nd accused was a police constable-cum-writer. P.W.1, who was running a toddy shop and two arrack shops owned under a public auction, had preferred a complaint against the accused for having committed the crime of trespass and mischief to register an FIR. The accused have demanded Rs.300/- for the 1st accused and Rs.200/- for the 2nd accused as illegal gratification. The sanction was accorded by the Deputy Inspector General of Police to prosecute under Ex.P.17 in that case for the offences indicated above. It was contended on behalf of the accused in that case that the sanctioning authority has not applied his mind into the

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documents placed before him before according sanction and hence, the whole prosecution case is vitiated. The Investigation Officer has not recovered the general diary in Kundadam Police Station, wherein A1 was working as a Sub-Inspector of Police at the time of occurrence, to verify whether there was any entry for the occurrence alleged to have taken place by P.W.1 in that case. This goes to the root of the case of the prosecution because before according sanction for prosecution the sanctioning authority viz. Deputy Inspector General of Police, ought to have verified the relevant documents like general diary kept in the police station to the effect whether an occurrence alleged to have been taken place as stated by the complainant-P.W.1, for registering the same as FIR. It was alleged that A1-Sub Inspector of Police and A2-writer have demanded Rs.300 and Rs.200 as an illegal gratification. Only on that ground it was held that the sanction was not held to be valid. So the facts of the above cited case will not be applicable to the facts of the case on hand.

13(5) The facts relied on by the learned counsel appearing for the appellant in 2006(6) Supreme 560 (State Inspector of Police, Visakhapatnam Vs. Surya Sankaram Kurri), will not be applicable to the facts of the case on hand because it was held in that case that P.W.37 was not a competent authority to accord sanction as per the rules available. That is is not the case herein because as per Ex.P.1-Rules, P.W.1 being Group B officer is competent to initiate departmental proceedings against the accused. So it cannot be said that P.W.1 is not competent to issue Ex.P.2-sanction order against the accused.

13(6) Focusing the attention of this Court to Article 311 of the Constitution of India, the learned counsel for the appellant would contend that a public servant cannot be dismissed or removed by an authority subordinate to him in the rank. Article 311 of the Constitution of India runs as follows:-

> "Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State:-
>
> (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.
>
> (2) No such person a aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges
>
> Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during

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such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed.

Provided further that this clause shall not apply_

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonable practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final"

The learned counsel for the appellate would contend that in view of the above said provision, P.W.1 being an officer subordinate to Divisional Engineer who is a superior officer, is not empowered to remove the accused from service. This argument has no legs to stand because without proper appreciation of Article 311 of the Constitution of India, the learned counsel for the appellant advanced an argument of said nature as indicated above. As per Article 311 of the Constitution of India, a public servant cannot be dismissed or removed from service by a person who is inferior in rank to the delinquent. It is not the case of the prosecution that P.W.1, a Sub-Divisional Engineer, is inferior in rank to the accused, who is a lineman. Ex.P.1 declares that P.W.1 being a Group B officer is competent to dismiss or remove the accused from service. P.W.1 in his evidence would admit that the Divisional Engineer is superior to him and that he cannot deny the fact that the Divisional Engineer is a person who had promoted the accused. Even though P.W.1 is inferior in rank to a Divisional Engineer but as Group 'B' officer who has given permission to the accused is competent to remove or dismiss the accused from service in lieu of Ex.P.1-rules in P & T Manual.

13(7) Per contra, the learned Special Public prosecutor relying on 1999 SCC (Cri) 1494 (Central Bureau of Investigation Vs. V.K.Sehgal and another and State of Haryana Vs. V.K.Sehgal), would submit that only if the accused had raised an objection that on account of an error or irregularity in the sanction for the prosecution, there was failure of justice to him and in this case, the accused had not raised a plea before the trial Court that the

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sanction accorded under Ex.P.2 by P.W.1 was irregular and erroneous thereby causing failure of justice to him. The exact observation in the above said dictum runs as follows:-

> "In a case where the accused failed to raise the question of valid sanction the trial would normally proceed to its logical end by making a judicial scrutiny of the entire materials. If that case ends in conviction there is no question of failure of justice on the mere premise that no valid sanction was accorded for prosecuting the public servant because the very purpose of providing such a filtering check is to safeguard public servants from frivolus or mala fide or vindictive prosecution on the allegation that they have committed offence in the discharge of their official duties. But once the judicial filtering process is over on completion of the trial the purpose of providing for the initial sanction would bog down to a surplusage. This could be the reason for providing a bridle upon the appellate and revisional forums as envisaged in Section 465 of the Court of Criminal Procedure"

Section 465 of the Cr.P.C., emphasis that by reason of error, omission or irregularity, a judgment cannot be set aside in appeal. Section 465 of Cr.P.C., runs as follows:-

> "Finding or sentence when reversible by reason of error, omission or irregularity,_
>
> (1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.
>
> (2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

For the same proposition of law the learned Special Public Prosecutor would rely on another decision in 2004 SCC (Cri) 2140 (State by Police Inspector Vs. T.Venkatesh Murthy). The relevant observation of the Honourable Apex Court at para 14 of the said judgment is as follows:-

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"In the instant case neither the trail Court nor the High Court appear to have kept in view the requirements of sub-section (3) relating to question regarding "failure of justice". Merely because there is any omission, error or irregularity in the matter of according sanction, that does not affect the validity of the proceedings unless the court records the satisfaction that such error, omission or irregularity has resulted in failure of justice. The same logic also applies to the appellate or revisional Court. The requirement of sub-section (4) about raising the issue at the earliest stage has not been also considered. Unfortunately, the High Court by a practically non-reasoned order, confirmed the order passed by the learned trial Judge. The orders are therefore, indefensible."

13(8) A reading of the judgment of the trial Court will go to show that the aspect about the validity of sanction has been dealt with by the learned trial Judge from para 13 to 16 A readings of those paragraphs will go to show that before the trial Court it had been contented that P.W.1 is not a competent authority to accord sanction for prosecution. But nowhere the accused had raised a contention before the trial Court that because of the sanction under Ex.P.2 accorded by P.W.1 it has resulted in violation of justice as contemplated under Section 19(3),(a), (b), (c) of the Prevention of Corruption Act, 1988.

13(9) The learned Special Public Prosecutor would vehemently content that for according sanction the prime object required is the person who accords sanction must be superior in service than the accused who is subordinate to him. In support of this contention, the learned Special Public Prosecutor would rely on an observation in a Full Bench decision of the Honourable Apex Court in 1991 (3) SCC 655 (K.Veeraswami Vs. Union of India and others). The said dictum runs as follows:-

"It is said that Section 6 (Section 19 under the new Act) envisages that the authority competent to remove a public servant from the office should be vertically superior in the hierarchy in which the office exists. Section 6 applies only in cases where there is a vertical hierarchy of public offices and the public srvants against whom sanction is sought from the sanctioning authority. Where the office held by the public servant is not a part of vertical hierarchy in which there is an authority above the public servant, then, Section 6 can have no application. We have been referred to the observations of Desai, J., in R.S.Nayak Vs. A.R.Antulay :

"That competent authority alone would know the

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nature and functions discharged by the public servant holding the office and whether the same has been abused or misused. It is the vertical hierarchy between the authority competent to remove the public servant from that office and that nature of the office held by the public servant against whom sanction is sought which would indicate a hierarchy and which would therefore, permit inference of knowledge about the functions and duties of the office and its misuse or abuse by the public servant. That is why the legislature clearly provided that authority alone would be competent to grant sanction which is entitled to remove the public servant against whom sanction is sought from the office"

.... It has been further observed in the same dictum as follows:- The power to give sanction for prosecution can be conferred on any authority. Such authority may be of the department in which the public servant is working or an outside authority. All that is required is that the authority must be in a position to appreciate the material collected against the public servant to judge whether the prosecution contemplated is frivolous or speculative. Under our enactment the power has been conferred on the authority competent to remove the public servant."

In the case on hand P.W.1 has categorically admitted in his deposition that before issuing sanction he has perused the complaint, report, FIR, Mahazer and other documents pertaining to the Telephones, Statement of witnesses, and after applying his mind on perusing the said documents and relevant records and after getting himself satisfied as to prima facie case has been made out against the accused, he accorded sanction under Ex.P.2. So under such circumstances, it cannot be said that, by no proper authority sanction has been accorded for prosecution against the accused as contended by the learned counsel for the appellant.

3(10) The learned counsel for the appellant relying on 1978 Crl.L.J NOC 14 (HIM.PRA) (Union of India, Vs. A.D.Bali), contended that who is the competent authority to grant sanction for prosecution against the accused under Section 6 of the Prevention of Corruption Act, is to be determined under Article 311 of the Constitution of India. As I already held in the previous paragraphs that P.W.1 is the competent authority as per Ex.P.1-rules under P & T Manual, the above said contention of the learned counsel for the appellant cannot be upheld.

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3(11) The dictum relied on by the learned counsel for the appellant in 1994 Supp (2) SCC 405 (State of TN Vs. T.Thulasingam and others), wherein it has been observed that it could be invalid if the sanction had been granted by the authority subordinate to the authority who had to grant the sanction and in that case would have been subject to challenge, will not be applicable to the present facts of the case because P.W.1, who as Group B officer in the telephone department, is competent to remove class IV employee (accused) as per the provisions under Ex.P.1.

13(12) For the same proposition of law the learned counsel would rely on 1993 Cri L.J. 750 (Rajendra Prasad Vs. State of MP), wherein the sanctioning authority was Secretary of Home Department, but the sanction was accorded by the Deputy Secretary. The said facts of the case will not be applicable to the present facts of the case.

13(13) The other dictum relied on by the learned counsel for the appellant in 2005(6) Supreme 547 (State of Goa Vs. Babu Thomas) will also not be applicable to the present facts of the case because in the said case there were two orders of sanction were relied on by the prosecution, one was obtained from the Board of Directors of the Goa Shipyard Company Ltd, and another sanctioning order was issued by Chairman and Managing Director of Goa Shipyard Company Ltd. It has been held in the said case that:

> "Sanction order did not refer to any resolution of Board of Directors pursuant to which Chairman issued sanction order. Sanction order being invalid, congnizance taken was bad in law."

But in the case on hand, the prosecution relies only on Ex.P.2-sanction order issued by P.W.1. So the facts of the case in the above said case will also not be applicable to the present facts of the case. The learned trial judge has discussed the above points in his judgment elaborately and has come to the correct conclusion that the sanction accorded by P.W.1 for prosecution against the accused under Ex.P.2 is valid in the eye of law.

13(14) The learned counsel for the appellant relying on 1998 Crl. L.J. 152 [G.V.Nanjundiah Vs. State (Delhi Administration)], contended that even P.W.1 would admit that the previous records of the accused will go to show that he was a honest employee and that his service records gives a clean chit against the accused, so under such circumstances, the case of the prosecution cannot be believed. The prosecution has initiated proceedings against the accused only on the complaint made by P.W.2 under Ex.P.3 on the specific allegation that the accused had demanded bribe. Under such circumstance only the trap, was arranged by the

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prosecution and the accused was caught red handed while receiving the bribe amount of Rs.300/- from P.W.2 and the specific test under Ex.P.8 will also go to show that the accused had received the bribe amount of Rs.300/-. So the fact that there was no adverse remarks in the service register of the accused will have no baring to give a finding in this case whether the charge against the accused has been proved or not. So the above said dictum will also not be applicable to the present facts of the case.

13(15) The next contention of the learned counsel for the appellant is that Ex.P.8 was not exhibited through any expert, but it was marked only through P.W.4. This contention cannot be upheld in view of the provision contemplated under Section 293 Cr.P.C. which runs as follows:-

"Reports of certain Government scientific experts:-

(1) Any document purporting to be a report under the hand of a Government scientific expert to whom this section applies, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

(2) The Court may, if it thinks fit, summon and examine any such expert as to the subject-matter of his report.

(3) Where any such expert is summoned by a court and he is unable to attend personally, he may, unless the Court has expressly directed him to appear personally, depute any responsible officer working with him to attend the Court, if such officer is conversant with the facts of the case and can satisfactorily depose in Court on his behalf.

(4) This section applies to the following Government scientific experts, namely:-

(a) any Chemical Examiner or Assistant Chemical Examiner to Government;

(b) the Chief Inspector of Explosives;

(c) the Director of the Finger Print Bureau;

(d) the Director, Haffkeine Institute, Bombay;

(e) the Director [Deputy Director or Assistant Director] of a Central Forensic Science Laboratory or a State Forensic Science Laboratory;

(f) the Serologist to the Government."

Ex.P.8, chemical analyst report in this case was produced by P.W.4, Investigation Officer, who would depose that the said report was received from Forensic Science Laboratory. The trial Court has thought that it is not necessary to summon the expert who issued Ex.P.8 in lieu of the other evidence like decoy witnesses P.W.3 and P.W.4 is available on record. So under Section 293 of Cr.P.C, Ex.P.8

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is a valid document exhibited before the trial Court.

13(16) The mere fact that P.W.8's name find a place in Ex.P.5-entrusted mahazar will not vitiate the entire prosecution case because there is no motive attributed against P.W.8 to put up a false case against the accused. The learned counsel for the appellant relying on 2002 CRI.L.J. 3059 (Tryambak Lilaji Binnar Vs. State of Maharashtra), contented that since Investigation Officer P.W.8's name find a place in Ex.P.4 the prosecution case cannot be a true one. In the said ratio the investigation was conducted by an Inspector who arranged the trap and lodged the FIR. Normally the investigation is not to be conducted by the person who lodges a complaint because he is interested in the success of his complaint. The investigation officer, who lodged the complaint, is not competent to investigate the case because he will be very much interested in getting his case ended in conviction. It was held in that case that the accused in that case was entitled to an acquittal. There cannot be two opinion with regard to the said dictum. But in the case on had, P.W.4 is the Inspector of Police, who received the complaint-Ex.P.3 from P.w.2. But the investigation was conducted by P.W.8. P.W.8 has not registered the complaint. Only P.W.4 has registered the complaint in this case. Under such circumstances, the facts of the above said case will not be applicable to the present facts of the case.

13(17) Relying on 2007 SC 489 (V.Venkata Subbaraov Vs. State rep by Inspector of Police, AP), the learned counsel for the appellant would contend that in a case of similar nature prior verification about the accused is necessary. In the said case the demand of money was not made by the accused but by another officer. The complaint was filed 15 days after the demand and even after cause for making demand had disappeared, trap was laid and decoy witness was arranged and the accused had received the bribe amount with both hand, inspite of it the solution in which one hand was dipped by the accused alone turned purple and it was also proved in that case that there was a grudge against the accused by the complainant who was an MLA in that locality. Only under such circumstance it was held that conviction cannot be upheld. But that is not the case herein. The demand was made by the accused at 1.40 pm on 28.6.1996 to P.W.2, the complainant and P.W.2 has handed over the bribe amount of Rs.300/- only to the accused at the same time ie. at 1.40 pm. The complaint was also preferred on the same day ie. on 28.4.1996 by the complainant-P.W.2 and the phenolphthalein test under Ex.P.8 also proved that the sodium carbonate solution containing the right hand wash of the accused turned pink in colour and the shirt pocket in which the accused had put the bribe amount of Rs.300/-, when subjected to the chemical phenolphthalein test as per Ex.P.8 also sodium carbonate solution turned pink in colour. Under such circumstance, the above dictum relied on by the learned counsel for the appellant will not applicable to the present facts

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of the case.

13(18) The learned counsel for the appellant would rely on 1984(2) Crimes 717 (Sat Pal Vs. State of Punjab), and contended that since one of the person who accompanied the accused to the office of P.W.2 and was present at the time of demand and acceptance of bribe by the accused, Viz. William, who was examined as P.W.7, has not supported the case of the prosecution and that the other witnesses who also accompanied the accused along with P.W.7 is one Duraisamy, but he was not examined, which will vitiate the case of the prosecution. In the above cited case there was no independent witness joined with the raid party and under such circumstance, it was held that the conviction of the appellant cannot be upheld in the absence of any independent witness to prove the trap. But that is not the case herein. Here the trap was conduced in the presence of P.W.3, 2 & 4 apart from that they have examined P.W.7, independent witness, who had accompanied the accused to the place of occurrence. P.W.7 is a co-employee of the accused and as expected he has not supported the case of the prosecution. Under such circumstances, Duraisamy the other person, who accompanied the accused, who is also a co-employee cannot be expected to give evidence against the accused and in favour of the prosecution. So the non-examination of the other witness Duraisamy who accompanied the accused to the place of occurrence will in any way destroy the case of the prosecution.

13(19) The next case relied on by the learned counsel for the appellant is AIR 1976 SC 91 (Raghbir Singh Vs. State of Punjab), wherein it has been observed as follows:-

> "The Officers functioning in the anti-corruption department must seriously endeavour to secure really independent and respectable witnesses so that the evidence in regard to raid inspires confidence in the mind of the court and the court is not left in any doubt as to whether or not any money was paid to the public servant by way of bribe."

Relying on the above said dictum the learned counsel for the appellant would contend that non-examination of the independent witness is fatal. It is pertinent to note in this case that P.W.3-Thiru.Devanatham is an employee of the New India Assurance Company. He is in no way connected with P.W.2. He is an independent witness. There is no motive attributed against P.W.3 to depose falsehood against the accused. So the above dictum will not be applicable to the present facts of the case.

13(20) The learned counsel for the appellant relied on 2002 CRI.L.J. 3899 (Ram Avtar Sah Vs. State of Bihar), and would submit that even the genesis of occurrence is doubtful because the decoy witness (P.W.2) has not obtained any permission under plan 102

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and 103 as per the evidence of P.W.5. In the above said dictum it has been held that:

> "No independent witnesses, however, examined by prosecution to support its case, moreover, name of complainant was found to be recorded in record of rights before the incident of acceptance of bribe, genesis of occurrence doubtful"

No doubt as per the evidence of P.W.5, P.W.2, the complainant, has not obtained the permission under plan 102 & 103 to provide an intercom service in the upstairs of his house. For this lapse the accused had went to P.W.2's house and snapped the wire connection leading to the intercom connection in the upstairs. Only to restore the said connection, it is the case of the prosecution that, the accused had demanded and received the bribe amount Rs.300/- from P.W.2. Under such circumstances, the contention of the learned counsel for the appellant the very genesis of the case is doubtful cannot hold any water.

13(21) The case relied on by the learned counsel for the appellant in 2003 CRI.L.J. 4055 (B.Doraswamy Vs. The state), is also not applicable to the present facts of the case because in the said dictum at the time of demand and acceptance of bribe by the accused P.W.4 was present taking lunch with the accused. But he is not supported the case of the prosecution at the same time he was not treated by the prosecution as a hostile witness. Under such circumstances, it was held in the said case that the prosecution has failed to prove the case. The said facts cannot be fitted to the present facts of the case by arguing that non-examination of Duraisamy, the other witness who was present at the time of demand and receipt of bribe amount by the accused, is fatal to the case of the prosecution, will not be sustainable.

13(22) The case relied on by the learned counsel for the appellant in 2005(3) Supreme 370 [Mukhtiar Ahmed Anshari Vs. State (N.C.T. of Delhi)], wherein it has been held that investigation by very same police officer who has lodged the complaint is fatal to the prosecution, will not be applicable to the present facts of the case because P.W.4 had registered the complaint but investigation has been done by P.W.8 in this case.

13(23) Basing his reliance on Section 20 of the Prevention of Corruption Act, 1988, which runs as follows:-

> "presumption where public servant accepts gratification other than legal remuneration:-
>
> (1) Where, in any trial of an offence punishable under Section 7 or Section 11 or clause (a) or clause (b) of Sub-section (1) of Section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempt to obtain for himself, or for any other

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person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under Section 12 orunder clause (b) of section14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in Section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-section (1) and (2), the Court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn."

the learned counsel for the appellant would rely on a dictum in AIR 1979 SC 1455 (Man Singh Vs. Delhi Administration), and contended that it is sufficient if the accused offers probable explanation or defence and in such case strict standard of proof is not necessary. The rudimentary principle in criminal jurisprudence is that the accused need not prove his innocence. The burden of proof is on the prosecution to prove the guilt of the accused. While incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused would admit that he had disconnected the intercom connection leading to the upstairs portion of the house of P.W.2, the complainant. To question No.6 he would admit that the bribe amount was put into his shirt pocket by P.W.2. Now there is an admission to the effect that the amount of Rs.300/- was in the pocket of the accused at the time of the occurrence. According to the accused, the bribe amount of Rs.300/- was put into his pocket by P.W.2. But according to the prosecution the accused had received the bribe amount of Rs.300/- through his right hand and put it into his shirt pocket. The prosecution has proved through oral and documentary evidence and also through scientific evidence under Ex.P.8 that the accused had received the bribe amount and put into his shirt pocket. The accused to rebut this evidence, who say that P.W.2 alone had put the bribe amount into his pocket, has not examined any witness. Even P.W.7 who had accompanied to the accused to the place of occurrence, who was examined before the court, has

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not deposed that the said bribe amount was put up by P.W.2 into the shirt pocket of the accused. The accused would have examined the other person Duraisamy, who accompanied him, to show that the bribe amount of Rs.300/- was put up by P.W.2 into the shirt pocket of the accused. Under such circumstances, the above said dictum will have no barring at all to the present facts of the case.

13(24) The learned counsel for the appellant also relied on XI 1984 (2) Crimes 785 (Jagdev Singh Vs. State of Punjab) and 2005(7) Supreme 256 (Union of India through Inspector, CBI Vs. Purnandu Biswas), and contended that only due to bad motive the P.W.2 has preferred a false complaint against the accused. The motive suggested was that the accused had snapped the wire leading to the intercom facility provided by P.W.2 to his upstairs portion without obtaining the permission under plan 102 & 103. As I already observed that only to restore the connection, it is the case of P.W.2 that, the accused had demanded bribe amount. If P.W.2 has any motive in respect of the incident connected with snapping of the intercom connection then he would have resorted to some other mode to take vengeance against the accused. Mere complaint by P.W.2 alone will not end in conviction of the accused. The conviction passed by the trial Court is based on oral and documentary evidence let in by the prosecution. Hence, the above said dictums will not be applicable to the present facts of the case.

13(25) The facts relied on by the learned counsel for the appellant in 2004(1) Supreme 913 (State of Andhra Pradesh Vs. T.Venkateswara Rao) and II 2002 CCR 169 (Ram Samugh Moury Vs. State of MP), will also not be applicable to the present facts of the case because in the earlier case cited, the prosecution alleged that the bribe was demanded to facilitate a contact in his favour. But it has been proved that the contract was not at all finalized and in the later case, it is the case of the prosecution that for a work already completed the accused had demanded bribe. Under these circumstances only the accused in the above said cases were acquitted. But here the case of the prosecution is the demand and the receipt of the bribe amount from P.W.2 by the accused has been proved beyond any reasonable doubt.

13(26) In the case relied on by the learned counsel for the appellant in 2002(4) Crimes 527 (Dr.A.Y.Prasad Vs. State), it was alleged that the accused had demanded Rs.300/- for an official favour by rendering treatment to patient without discharging hi. But it was in evidence that the accused is not the person having powers to admit or discharge the patient. Only under such circumstances, the accused was acquitted in the said case. But that is not the case herein. Here the demand as well as the receipt of bribe amount has been proved by oral as well as documentary evidence let in by the prosecution. So, the above said dictum will not be applicable to the present facts of the case.

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13(27) Relying of AIR 1971 SC 520 (P.Sirajuddin Vs. State of Madras), the learned counsel for the appellant would contend that in the case of this nature a preliminary enquiry is necessary before lodging FIR. A reading of the said dictum will go to show that it was not a trap case. The accused Sirajuddin in that case was the Chief Engineer, Highways and Rural Works, at the relevant point of time and on the basis of the complaint preferred to the Chief Minister of the State, a confidential enquiry was ordered to be conducted by the Director of Vigilence of the Ante Corruption and without a preliminary enquiry FIR has been lodged by the investigation officer in the said case, it was held to be fatal to the prosecution case by the Honourable Apex Court. So the above said facts will not be applicable to the present facts of the case because this is a trap case.

13(28) The learned counsel for the appellant relied on 1990(1) Crimes 609 (State of UP Vs. Ram Asrey), wherein the accused was acquitted on the ground that there was no acceptable and clinging evidence to show that the accused demanded a bribe and accepted the amount as a motive or reward. But in the case on hand there was sufficient proof by way of oral and documentary evidence produced by the prosecution to the effect that the accused had demanded bribe from P.W.2 and accepted Rs.300/- towards illegal gratification. So the above said dictum will not be applicable to the present facts of the case.

13(29) In 1995 CRI.L.J 2571 (Vishwanath Vs. State of Maharashtra), the complaint was lodged against the Court clerk charging that he had demanded bribe for cancelling of a warrant issued against the brother of the complainant and Complainant himself was facing several prosecution. As sufficient reasons to know that it is not in the hands of the Court Clerk to get a warrant cancelled, it has been held by the Bombay High Court in that case that the case of the prosecution has been shrouded in mystery and has to be disbelieved and there was also delay in lodging the complaint. Further, there was motive established against the accused by the complaint. So the above said dictum will not be applicable to the present facts of the case.

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13(30) The learned counsel for the appellant also relied on an unreported judgment of this Court in C.A.No.667 of 1995, wherein it has been held that an accused cannot be punished both under Section 7 and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. There cannot be to opinion about this findings.

13(31) The learned counsel for the appellant also relied on 1985 CrI. L.J.1567 (The State Vs. Varadarajan). In the said case

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the accused was a head clerk in the District Health Office, who offered to help a suspended employee of the same office provided he paid him Rs.1000/-. A trap was laid. On the appointed day the suspended employee went to the residence of the accused stayed there for 10 minutes, then both of them went to a restaurant and had their meals. The accused then stated that they would go to the office and for that they board a bus. They got down near the house of the Personal Assistant to the District Health Officer. While they were crossing an open space in their way to the house of Personal Assistant the accused demanded money and the money was handed over to him. Then they went to the house of the Personal Assistant. The suspended employee gave a signal to the Investigating Officer ten minutes afterwards. The Investigating Officer came ten minutes later and effected the seizure. It was held in that case that there was delay in recovery of notes as well as change of place and the evidence of recovery was, therefore, held not free from doubt. Only under such circumstance, the accused was acquitted in that case. But that is not the case herein. There was no delay in preferring the complaint. The accused was caught red handed while receiving bribe amount of Rs.300/- from P.W.2 and putting the same into his pocket. The prosecution has proved the guilt of the accused beyond any reasonable doubt in this case. So I am of the firm view that the conviction awarded by the trial Court cannot be held to be improper or illegal or studded with improbabilities.

13(32) The next limb of argument advanced by the learned counsel for the appellant is that the accused has been charged under Section 7 of the Prevention of Corruption Act, 1988, and also under Section 13(1)(d) of the said Act, but under Section 13 (1)(d) there are three sub-sections viz. (i), (ii) & (iii) and that the prosecution has failed to indicate under which of the provisions (i), (ii) & (iii) to Section 13(1)(d) of the said Act, the accused has been charged and that the charge against the accused is that for giving connection to the telephone indicator No.8547095 of the complainant Thiru.J.Gnanasekaran(P.W.2) and that the accused being a public servant working in Telephones Department as a lineman said to have demanded Rs.300/- as an illegal gratification, which squarely comes within the purview of Section 13(1)(d)(ii) of the Prevention of Corruption Act, but this was not specifically stated in the charges, so the entire case of the prosecution shall be vitiated. This type of argument cannot at all be upheld because a reading of Section 464 of Cr.P.C will clearly go to show that an omission to frame, or absence of, or error in charge will not invalidate a criminal proceedings. Section 464 of Cr.P.C, runs as follows:-

> "Effect of omission to frame, or absence of, or error in, charge:- (1) No findings sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge

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including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may,_

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommended from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit;

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction."

Mere non-mentioning of a sub-clause in Section 13(1)(d) of the Prevention of Corruption Act, 1988, will not, in may firm opinion, vitiate the entire proceedings of this case.

13(33) The learned counsel for the appellant relying on AIR 2007 SC 51 (The State Vs. Parthiban), contended that demanding and receiving illegal gratification is an act against a public servant which constitute an offence both under Section 7 and Section 13(1)(d) of the Prevention of Corruption Act and that it has been held in the said dictum that an offence being single transaction but fall under two different section the offender cannot be liable for double penalty. The observation in the above said dictum at para 9 runs as follows:-

"Every acceptance of illegal gratification whether preceded by a demand or not would be covered by Section 7 of the Act. But if the acceptance of an illegal gratification is in pursuance of a demand by the public servant, then it would also fall under section 13(1)(d) of the Act. The act alleged against the respondent, of demanding and receiving illegal gratification constitutes an offence both under Section 7 and under Section 13(1)(d) of the Act. The offence being a single transaction, but falling under two different Sections, the offender cannot be liable for double penalty. But the High Court committed an error in holding that a single act of receiving an illegal gratification, where there was demand and acceptance, cannot be an offence both under Section 7 and under Section 13(1)(d) of the Act. As the offence is one which falls under two different sections providing different punishments, the offender should not be punished with a more severe punishment than the court could award to the person for any one of the two offences. In this

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case, minimum punishment under Section 7 is six months and the minimum punishment under Section 13(1)(d) is one year. If an offence falls under both Sections 7 and 13(1)(d) and the court wants to award only the minimums punishment, then the punishment would be one year."

For this proposition of law there is no contrary ratio decidendi produced by the learned Special Public Prosecutor. Section 7 of the Prevention of Corruption Act,1988 deals with public servant taking gratification other than legal remuneration in respect of an official Act. Section 13(1)(d) of the said Act also deals with the criminal misconduct by a public servant by mean of corrupt or illegal means, obtains for himself of for any other person any valuable thing or pecuniary advantage; or by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest. So as observed in the above said dictum both the offence under Section 7 of the Prevention of Corruption Act and the offence under Section 13(1)(d) of the said Act are one and the same ie. a public servant receiving illegal gratification for performing his official function. The learned trial judge has convicted the accused both under section 7 and also under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act,1988 to undergo two years RI under each of the above said sections and also levied separate fine of Rs.300/- under each of the above said sections of law, which is illegal in view of the above said dictum of the Honourable Apex Court. So the accused can be convicted only under Section13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, and the conviction and sentence by the trial Court under Section 7 of the Prevention of Corruption Act, 1988 is liable to be set aside.

13(34) The third limb of argument of the learned counsel for the appellant is that the evidence of P.W.1 is highly motivated. The learned counsel for the appellant would contend that P.W.2, who is the author of Ex.P.3-complaint, had intercom facility in his premises and it is evident from the evidence of P.W.5, an official of Telegraphic Department, that P.W.2 had not applied for any plan 102 or 103, which is required to avail the intercom facility. Since P.W.2 has illegally taken a parallel connection from the ground floor in order to provide an intercom without necessary sanction under Plan 102 and 103, the appellant had disconnected the connection and in order to take vengeance for the same P.W.2 has given a false complaint. This contention of the learned counsel for the appellant has no legs to stand because if P.W.2 wants to take vengeance against the accused then he would have resorted to some other method by way of assault or by any other physical violence by him or by engaging assailants. There is no need for P.W.2 to give a complaint against the accused under the provisions of Prevention of

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Corruption Act, 1988. It is the specific case of P.W.2 that to restore the disconnected intercom connection only the accused had demanded Rs.300/- from P.W.2.

13(35) This is a trap case. How the accused was trapped is spoken to by P.W.4-Thiru A.K.Sunil, The Inspector of Police, ACB, Chennai. The evidence of P.W.4 has been corroborated by P.W.3, the Manager of New India Insurance Company and P.W.2. According to the evidence of P.W.2, on 28.6.1996 at about 1.40 pm the accused came to his house along with two persons and informed that he has restored the connection and demanded money by way of bribe and P.W.2 gave the amount to the accused, who received the same and put it in his shirt pocket and immediately P.W.3-Devanathan, who is a decoy witness, has made signal to the police, who was waiting out side by hiding themselves, by wiping his face with hand kerchief and the said bribe amount of Rs.300/- was recovered in the presence of P.W.3. It is evident from the evidence of P.W.3 that phenolphthalein as well as sodium carbonate tests were conducted and when the right fingers of the accused were dipped in the sodium carbonate solution it turned pink in colour and when the shirt pocket of the accused was dipped in the sodium carbonate solution it turned pink in colour. So there is no motive attributed against P.W.3 to depose falsehood against the accused. There is no motive alleged against the other witnesses P.W.1 and P.W.4 to P.W.8 to put up a case against the accused as contended by the learned counsel for the appellant.

13(36) At this juncture the learned counsel for the appellant would contend that as per the evidence of P.W.3, the accused had not touched the decoy amount Rs.300/- by his left hand, but as per the chemical analyst's report-Ex.P.8 the bottle containing the solution in which the left hand of the accused was dipped also turned a pale pink colour, hence, the case of the prosecution that the accused had received the money as bribe amount cannot be a true one. The fact that the solution in the bottle, in which the left hand wash of the accused, turned pink will not derive us to a conclusion that the accused would not have received the bribe amount because the case of the prosecution and the witnesses is that the accused had received the bribe amount of Rs.300/- in his right hand and put the same into his pocket. As per Ex.P.8 both the bottles containing the right hand wash and the bottle containing the shirt pocket wash have turned pink itself will prove that the accused had received the bribe amount through his right hand and put the same in his pocket beyond any reasonable doubt.

13(37) With regard to the question of sentence as I have already referred in earlier paragraphs, there cannot be a conviction under Section 7 as well as Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. But unfortunately in this case the trial Court has convicted the accused both under Section 7 as

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well as under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, which warrant interference by this Court, only in respect of sentence. Point is answered accordingly. (AIR 2007 S.C. 51)

14. In the result, the appeal is dismissed confirming the judgment in C.C.No.206 of 1997 on the file of the Principal Special Judge for CBI Cases, Chennai, with the following modification:- The conviction and sentence by the trial court under Section 7 of the Prevention of Corruption Act, 1988, is set aside. The accused is convicted and sentenced under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, to undergo one year RI instead of two years. The accused is entitled to receive the fine amount imposed under Section 7 of the Prevention of Corruption Act, but the fine levied under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, will sustain. The accused is entitled to set off under Section 428 of Cr.P.C. The trial Court is directed to secure the accused to undergo the unexpended portion of the sentence.

ssv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The Principal Special Judge for CBI Cases, Chennai.

2. The Inspector of Police, CBI, Special Police Establishment Anti-Corruption Branch, Chennai.

3. The Special Public Prosecutor, Chennai.

+ 1 cc to M/s. Lakshmipriya Associates, SR No. 16876

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